IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 209 of 2006

Date of decision : 11.7.2006

Ram Piari and others **…….Appellants**

Versus

Gurditta and others **….. Respondents**

Coram

The Hon'ble Mr. Justice : **Surjit Singh, Judge.**

Whether approved for reporting?

For the appellants: Mr. G.D. Verma, Sr. Advocate, with Mr. B.C. Verma, Advocate.

For respondents : Nemo.

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Respondents / plaintiffs filed a suit for declaration that the entries in the revenue record, regarding land comprised in Khewat Nos. 86 and 87, per Jamabandi for the year 1990-91, pertaining to village Dial, Mauza Har, Tehsil Dehra, District Kangra, reflecting the shares of the plaintiffs and the defendants, were not correct and that the shares of the parties, i.e. the plaintiffs and the defendants, in the aforesaid two Khatas were actually different from those recorded in the said Jamabandi.

Whether reporters of Local Papers may be allowed to see the Judgment?

3. Defendants contested the suit and pleaded that the shares had been correctly recorded. It was also alleged that the suit was barred by limitation inasmuch as the entries, which had been challenged, had been made about fourteen years prior to the institution of the suit and that two of the plaintiffs / respondents and two of the defendants, who were the sisters of plaintiff No. 1 and defendant No. 1, had already relinquished their shares in favour of plaintiff No. 1 and defendant No. 1 considering themselves to be the co-owners to the extent as recorded in the revenue papers, meaning thereby that they conceded that the shares had been correctly recorded and that those relinquishment deeds, having not been challenged, the suit was neither maintainable nor within time.

4. The trial Court framed various issues and ultimately concluded that the suit was within time and that the shares of the parties had been correctly recorded. Consequently the suit was decreed and the shares of the parties were ordered to be corrected in the revenue papers, as follows:-

Sr.No.	Status & Number of the party.	Share in Khata No. 87.	Share in Khata No. 86.
1.	Plaintiff No. 1	21/49	966/3479.
2.	Plaintiff No. 2	7/49	322/3479
3.	Defendant No. 1	21/49	2191/3479

Decree was passed accordingly.

5. During the pendency of the suit, defendant No. 1 died, so his legal representatives were brought on record. Feeling aggrieved by the decree of the trial Court, the legal representatives of defendant No. 1 filed an appeal in the Court of the learned District Judge. That appeal has been dismissed. Now the legal representatives of defendant No. 1 have come in appeal to this Court.

6. Facts, which need be noticed for understanding the controversy, may be summed up thus. The predecessor of the parties was one Ram Dass. He was the owner of the entire land comprised in Khata No. 87 and a co-sharer in Khata No. 86 with defendant No. 1. His own share in Khata No. 87 was 46/71, while the share of defendant No. 1, in his own right, was 25/71. Ram Dass died leaving him surviving seven heirs, i.e. two sons (plaintiff No. 1 and defendant No. 1), a widow (plaintiff No.2) and four daughters (plaintiffs No. 3 and 4 and defendants No. 2 and 3). His estate was mutated in equal shares in favour of his two sons, widow and four daughters, that is to say each of the seven heirs got 1/7th share. This way, each heir got 1/7th share in Khata No. 87 and 46/322 share each in Khata No. 86. However, in the revenue papers the entries were not correctly recorded and that gave cause of grievance to the plaintiffs.

7. Admitted case of the parties is that the four daughters of Ram Dass relinquished their shares in favour of his two sons, i.e. plaintiff No. 1 and defendant No. 1. The mother, however, retained her share. The trial Court has worked out the shares of the two sons and the widow of deceased Ram Dass taking into account the admitted position that four daughters of Ram Dass relinquished their shares in favour of his two sons. Now, when Ram Dass was the owner of the whole of the area comprised in Khata No. 87 and all his seven legal heirs inherited 1/7th share each and his four daughters relinquished their shares in favour of his two sons, the shares of the two sons rose to 3/7th each and the widow of Ram Dass remained co-owner to the extent of 1/7th share. The trial Court has rightly worked out their shares in the said Khata being 21/49th of the two sons (each) and 7/49th of the widow. Similarly, the shares of two sons and the widow of Ram Dass in the ratio of 3/7th being the share of each of the two sons and 1/7th being the share of the widow have also been correctly

worked out as regards Khata No. 86. Defendant No.1 was already having 25/71 shares in the said Khata. This share of defendant No. 1 has been kept apart while calculating the shares of the two sons and the widow, based upon the inheritance of the estate of Ram Dass and relinquishment of their shares by the daughters of Ram Dass. Thus, as regards the merits of the case, I do not find any error with the judgment of the trial Court, as affirmed by the first Appellate Court.

8. The contention of the learned counsel for the appellants that the suit was barred by time is without merit. Admittedly four daughters of Ram Dass had relinquished their shares, that is to say the shares which they got by way of inheritance of the estate of their father, in favour of their two brothers and, therefore, even if they relinquished the shares different from their actual shares, because of the wrong entries in the Jamabandi, that should not make any difference. Admitted position is that the four daughters of Ram Dass relinquished what they got by way of inheritance of the estate of their father, in favour of their brothers. Thus, there was no need for questioning or challenging the act of relinquishment and hence the suit cannot be said to be barred by time on this score.

9. No other point has been urged.

10. As no question of law arises, the appeal is dismissed.

CMPs No. 303 & 304 of 2006

Dismissed as having become infructuous.

July 11, 2006 (BC) **(Surjit Singh)**
Judge